

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2241 (Rev. 10/10)

ADOPTED BY THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

FILED  
U.S. DISTRICT COURT  
NORTHERN DIST. OF TX.  
FT. WORTH DIVISION

2010 DEC -7 PM 12:51

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FT. WORTH DIVISION

PETITION FOR WRIT OF HABEAS CORPUS  
UNDER 28 U.S.C. § 2241

Martha Bell

PETITIONER

(Full name of Petitioner)

FMC Carswell, Ft. Worth Texas

CURRENT PLACE OF CONFINEMENT

vs.

08236-068

PRISONER ID NUMBER

Joseph Keffer,  
Warden, FMC Carswell

RESPONDENT

(Name of TDCJ Director, Warden, Jailor, or  
authorized person having custody of Petitioner)

4-10 CV - 928-A

CASE NUMBER

(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten, and signed and dated by the Petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except that ONE separate additional page is permitted in answering question 10.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show

that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only one sentence, conviction, disciplinary proceeding, or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petition(s).
6. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices.
7. It is your responsibility to immediately notify the court in writing of any change of address. Failure to notify the court of your change of address could result in the dismissal of your case.

### PETITION

**PLEASE COMPLETE THE FOLLOWING:** (check the appropriate number)

This petition concerns:

1. \_\_\_\_\_ pretrial detention;
2.   ✓   a conviction;
3. \_\_\_\_\_ a sentence;
4. \_\_\_\_\_ jail or prison conditions;
5. \_\_\_\_\_ a prison disciplinary proceeding;
6. \_\_\_\_\_ parole or mandatory supervision;
7. \_\_\_\_\_ time credits;
8. \_\_\_\_\_ other (specify): \_\_\_\_\_

Have you pursued to completion all relevant state and/or prison administrative remedies relevant to your complaint(s) before filing this petition. ☐ Yes ☐ No If yes, what was the date of the result and the result of any such proceeding. If no, explain why you have not pursued all such remedies.       I have no state or prison remedies to pursue on my        
claim presented in this petition.

1. Place of detention: FMC Carswell, P.O. Box 27137, Ft. Worth, TX 76127
2. State the offense with which you have been charged and whether you have been convicted of the charged offense(s) or whether you are still awaiting trial: health care fraud (Ct. 1) and false statements relating to health care matters.(Cts.2-11) Convicted cts 1,2,3,4,5,6,8,9,11. Not guilty cts. 7,10.
3. Name and location of court in which your case is pending or in which you were convicted: Convicted in the United States District Court, Western District of Pennsylvania
4. The criminal docket or case number and the offense(s) for which you have been charged or convicted: 04-cr-212-1. 18USC 1347 and 2 (Ct. 1), 18 USC 1035(a)(2) & 2 (Cts 2-6,8, 10-11)
5. If you have been convicted of the charged offense(s), the date upon which sentence was imposed and the length of the sentence: 10/27/2006; Sixty months' imprisonment, 3 years' supervised release, \$50,000.00 fine, \$900.00 special assessment.
6. Check whether a finding of guilty was made:
  - a. after a plea of guilty \_\_\_\_\_
  - b. after a plea of not guilty ✓
  - c. after a plea of nolo contendere \_\_\_\_\_
7. If you were found guilty, check whether that finding was made by:
  - a. a jury ✓
  - b. a judge without a jury \_\_\_\_\_
8. Did you appeal from the judgment of conviction or the imposition of sentence?  
☒ Yes      ☐ No

9. If you did appeal, give the following information for each appeal:

a. (1) Name of court and docket or case number:

United States Court of Appeals for Third Circuit. 28 Fed. Appx. 184 (3d Cir

2008), 06-4648

(2) Result and date of result: conviction and sentence affirmed

(3) Grounds raised (list each):

(a) Insufficient evidence as to counts one and three

(b) failure of the government to establish a scheme or artifice to defraud

(c) evidence established no more than a violation of "general  
administrative regulations".

(d) violation of Brady when government seized and then withheld  
correspondence with Senator Santorum & suppressed prior statements

b. (1) Name of court and docket or case number:

United States Supreme Court, Bell v. USA, 2008 LEXIS 7449 (10/14/08)

(2) Result and date of result: certiorari denied. 10/14/2008

(3) Grounds raised (list each):

(a) whether conviction for health care fraud must be reversed because  
a Medicare/Medicaid certification is not money or property ?

(b) Whether the conviction for making false statements to conceal

allegely substandard medical care must be reversed because there is no  
clear evidence of what constitutes substandard

medical care? (c) Whether 3d Circuit decision regarding alleged Brady violation

conflicts with decisions of this court and other courts regarding the

government's obligation to disclose impeachment  
evidence in the possession of law enforcement?

I have also filed an application for certificate of appealability in the U.S. Court of Appelas (C.A. 10-2701) following denial of my 2255 motion. I have filed a bail motion in the Third Circuit court of appeals. Both motions are pending.

(d) \_\_\_\_\_

10. State concisely every ground on which you claim that you are held unlawfully. Summarize briefly the facts supporting each ground. If necessary, attach a single page only behind page 6.

**CAUTION:** If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. You must state facts, not conclusions, in support of your grounds. Do not argue or cite law. Just state the specific facts that support your claim. Legal arguments and citation to cases or law should be presented in a separate memorandum.

My Fifth Amendment right to due process has been violated because  
a. **GROUND ONE:** I am actually innocent of Count 1 of the indictment which charged a scheme to defraud based on a theory of deprivation of the right to honest services without an allegation of bribes and kickbacks and without an allegation of a fiduciary relationship. Because the convictions for making false statements were inextricably intertwined with the conviction for health care fraud, and elimination of the health care fraud count would have significantly changed trial strategy, false statement convictions must be reversed on grounds of retroactive misjoinder. [See attached Memorandum of Law].

Supporting facts:  
Ms. Bell's case involves a conviction for honest services health care fraud in violation of 18U.S.C. 1347. The health care fraud statute was modeled after the federal mail and wire fraud statutes. Federal courts have relied on interpretations of the bank fraud statute and mail fraud statutes to interpret the health care fraud statute. Given the lineage of the health care fraud statute, it stands to reason that the Skilling decision decriminalized honest services health care fraud not involving bribery and kickbacks and not involving a fiduciary relationship. (Continued on attached page.)

b. **GROUND TWO:**

Supporting facts: \_\_\_\_\_

Because the convictions for making false statements were inextricably intertwined with the conviction for health care fraud, and the elimination of the health care fraud count would have significantly changed the trial strategy, the false statements must be reversed on grounds of "retroactive misjoinder". Without the health care fraud count, the false statements were not material, and therefore, not criminal. As such, all of Martha Bell's convictions must be reversed.

The absence of evidence of overbilling combined with the jury instructions indicate that Ms. Bell was convicted on a theory of deprivation of the right to honest services:

A scheme or artifice to defraud includes a scheme to deprive another person of tangible, as well as intangible property rights. Intangible property rights means anything valued or considered to be a source of wealth, including, for example, **the right to honest services and the right to decide how one's money is spent.** [Transcript of Jury Instructions at page 26].

The facts suggest that Ms. Bell was convicted on an honest services theory because there was no other viable theory. There was no evidence that she defrauded Medicare/Medicaid of money or property. The Government's audit established that Atrium and Ms. Bell under-billed Medicare/Medicaid for services provided. There is no case law indicating that a Medicare/Medicaid certification is money or property in the hands of the victim. There was no evidence that Medicare/Medicaid sustained any losses whatsoever

In this case, the government's audit failed to reveal overbilling for services. As a result, the government's theory of the case changed from a scheme to defraud Medicare/Medicaid of the right to honest services. The Government's only viable theory was deprivation of honest services, which is no longer criminal.

The cases cited in the attached Memorandum of Law demonstrate that Mr. Bell is entitled to relief because mail fraud convictions could not be based on a theory of honest services absent bribes or kickbacks.

Because the convictions for making false statements were inextricably intertwined with the conviction for health care fraud, and the elimination of the health care fraud count would have significantly changed the trial strategy, the false statements must be reversed on grounds of "retroactive misjoinder."

Ms. Bell preserved these claim(s) by challenging the sufficiency of the evidence on direct appeal, and by attacking the convictions in the 2255 motion albeit on a range of theories including, but not limited to the failure on the part of the government to prove that Martha Bell engaged in a scheme to defraud a health care benefit plan of money or property because a Medicare/Medicaid certification is not money

Without having the benefit of *Skilling v. United States*, 2010 U.S. Lexis 5269 (6/24/10), which decriminalized honest services fraud unless it involved bribery or kickbacks, the district court denied the 2255 motion. Ms. Bell has filed an application for COA which is pending in the United States Court of Appeals for the Third Circuit. Ms. Bell also filed a motion for bail, which is also pending. In response to the bail motion, the Government has taken the position that Ms. Bell must raise her *Skilling* claim in a 2241 petition in the Northern District of Texas. See Exhibit to Attached Memorandum of Law.

\_\_\_\_\_  
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\_\_\_\_\_  
**c. GROUND THREE:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supporting facts: \_\_\_\_\_  
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**d. GROUND FOUR:** \_\_\_\_\_  
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Supporting facts: \_\_\_\_\_  
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11. Relief sought in this petition: vacate my conviction and sentence on all counts.

12. Have you filed a previous application or petition for habeas corpus or any other application, petition or motion with respect to the grounds raised in this petition?

☒ Yes ☐ No

13. If your answer to Question No. 12 is yes, give the following information as to each previous application, petition, or motion:

a. (1) Name of court and docket or case number: United States District Court, Western District of Pennsylvania, 09-civil-739 [04-cr-212-1]

(2) Result and date of result: 2255 motion denied without a hearing

(3) Grounds raised (list each):

(a) violation of 6th Amendment right to effective assistance of counsel for failure to object to testimony of Mark Irwin; failure to request a

(b) Ratzlaff instruction; failure to object to two-inference instruction and instruction on credibility; failure to object to honest services

(c) instruction; failure to object to inclusion of reckless indifference; appellate counsel was ineffective for failure to appeal erroneous jury

(d) instructions. Violation of due process indictment charged scheme to defraud based on theory of deprivation of right to honest services

~~x~~ ~~(1) Name of court and docket or case number~~ without an allegation of bribes and kickbacks and without an allegation of a fiduciary relationship; the jury instruction

~~(2) Result and date of result~~ amended the indictment to conform to the proof at trial;

~~(3) Grounds raised (list each)~~

~~(a)~~ the conviction for Medicare/Medicaid fraud must be reversed because it was based on the theory that false statements were made to



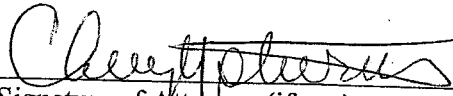
~~(b)~~ maintain Medicare/Medicaid certification, but this was not the  
theory of liability charged in the indictment

(c)

(d)

14. If applicable, state whether you have filed a motion under 28 U.S.C. § 2255, and if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention.  
I filed a motion under 28 U.S.C. Section 2255 and an application for certificate of appealability  
that is pending in the United States Court of Appeals for the Third Circuit. In response to a bail motion  
I filed in relation to the application for certificate of appealability, the Government claims that  
my Skilling claim must be raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. Sec  
2241. If the Government is correct, 28 U.S.C. Section 2255 is inadequate and ineffective to test  
the legality of my detention.
15. Are you presently represented by counsel? ☒ Yes ☐ No  
If so, name, address and telephone number of attorney: Cheryl J. Sturm, Attorney at Law, 387  
Ring Road, Chadds Ford, PA 19317 484-771-2000
16. If you are seeking leave to proceed *in forma pauperis*, have you completed an application setting forth required information? ☐ Yes ☐ No

Wherefore, Petitioner prays that the Court grant him the relief to which he may be entitled.

  
Signature of Attorney (if any)

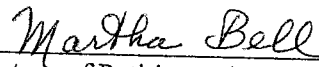
Cheryl J. Sturm, Attorney at Law

387 Ring Road

Chadds Ford, PA 19317

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, day, year).

Executed (signed) on November 30, 2010 (date).

  
Signature of Petitioner (required)

Petitioner's current address:

Martha Bell

Register No. 08236-068

FMC Carswell, P.O. Box 27137

Ft. Worth, Texas 76127

CHERYL J. STURM  
Attorney At Law  
387 Ring Road  
Chadds Ford, PA 19317

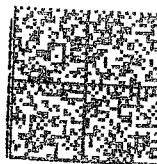
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